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State v. Sherman Appellant's Reply Brief Dckt. 40995

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

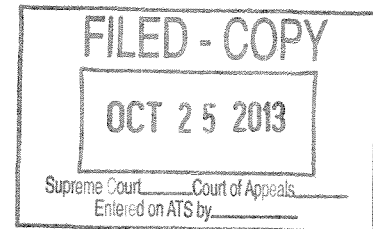
Plaintiff/
Respondent,

V.

NIKOLAS LEE SHERMAN,

Defendant/
Appellant.

SUPREME COURT NO. 40995
CR-12-0008124



APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, IN AND
FOR THE COUNTY OF KOOTENAI

HONORABLE JOHN P. LUSTER
District Judge

JOHN M. ADAMS
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ATTORNEY FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff/)	
Respondent,)	SUPREME COURT NO. 40995
)	CR-12-0008124
V.)	
)	
NIKOLAS LEE SHERMAN,)	
)	
)	
Defendant/)	
Appellant.)	
_____)	

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TABLE OF CONTENTS

Table of Cases and Authorities.....	ii
Statement of the Issues Presented.....	1
Argument	
I. The state’s interpretation of I.C. § 54-1732(3)(c) may be correct but would not entail criminal liability for the defendant.....	2
II. The lower Court was provided sufficient evidence to recognize the creation of a bailment between friends.....	4
Certificate of Delivery	5

TABLE OF AUTHORITIES

CASES

Bridge Tower Dental, P.A. v. Meridian Computer Center, Inc., 152 Idaho 569, 573 (2012) -----	4
State v. Leavitt, 121 Idaho 4 (1991)-----	4
Walton v. Arizona, 497 U.S. 639 (1990)-----	4

STATUTES

I.C. § 54-1732-----	2
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STATEMENT OF THE ISSUES PRESENTED

- I. Whether I.C. § 54-1732(3)(c) can be interpreted to outlaw the possession of medication which has yet to be prescribed.
- II. Whether the defendant failed to establish a bailment existed when he alleged his friend asked him to hold onto his medication for safekeeping.

ARGUMENT

I.

The state argues in its brief that I.C. § 54-1732(3)(c):
does not prohibit individuals from possessing medications prescribed for others as long as that individual obtains the drugs through a valid prescription “for” and ultimate user of the drug (e.g., an individual may lawfully pick up prescribed medication at a pharmacy for another).

Respondent’s Brief at 8-9. The defendant would welcome such an interpretation if its contours could be established. The state’s interpretation could mean that anyone who has a prescribed medication does not come within the ambit of the statute. In that case, the defendant’s conduct would also not come within the statute and this case should be dismissed.

However, the state seems to mean something else as it goes on to argue that the law applies to the defendant, and describes his conduct as “possession of another individual’s prescription medication, which [the defendant] claims to have obtained through a third individual.” Respondent’s Brief at 10. Setting to one side for the moment that the defendant actually claims to have believed the medication belonged to the individual he received it from, the state’s earlier interpretation does not seem to apply to even its erroneous adopted scenario. The state apparently argues that to obtain a medication at the pharmacy is to obtain it through a valid prescription. However, if one obtains the medication from person X who received it from person Y and person Y has a valid prescription that is in violation of the law.

It is not clear how, or even whether, I.C. § 54-1732(3)(c) differentiates between the pharmacist and the person who obtains the prescription from the person prescribed. In neither

instance is the defendant who obtains from those two individuals in possession of or intended by a practitioner to make any use of a prescription drug order. Many people go to pick up a spouse's prescription refill without anything but their spouse's name, but even if they happen to be picking up the prescription for the first time, the problem remains that the prescription drug order is for the ultimate user. Other individuals are not typically specified, and there does not appear to be a mechanism by which a practitioner could specify them.

The state's interpretation may, however, save the statute from constitutional scrutiny, if the statute is meant to only provide criminal liability for those who come into possession of legend drugs and/or their precursors which have never been prescribed. Such a law would also fit within Chapter 17 of Title 57, which appears to be intended to ensure that legend drugs and their precursors are controlled for distribution by pharmacists and other licensed practitioners. Other chapters and titles of the Idaho Code are intended for dealing with unlawful possession of controlled substances or theft.

The problem with this interpretation is that the statute states that the person in possession must be the one who obtained the medication on a prescription or drug order. This seems to indicate that the same person who possesses the medication must also be prescribed the drug, which is how the prosecution and lower courts read the statute in this case. If this Court were to interpret "on the prescription or drug order of a practitioner" as intending merely that the medication in question was, at one point in time, prescribed, then the statute would survive

rational scrutiny. And further, this Court should remand for further proceedings or dismiss the case as the defendant did not violate the law under this interpretation.

II.

The state argues that the defendant failed to allege specific facts to allow for the warehouseman exception instruction due to failing to show how the defendant's control over the medication was limited and that holding onto medication for a friend was a usual and lawful practice. Respondent's Brief at 14. While it is true that no attempt was made to explain to the lower courts how the law applies when one person asks another to hold on to an item for them, such an explanation was not required for a jury instruction. As the United States Supreme Court and the Idaho Supreme Court have found, "Trial judges are presumed to know the law and to apply it in making their decisions." *Walton v. Arizona*, 497 U.S. 639 (1990); *State v. Leavitt*, 121 Idaho 4 (1991). Bailment is a generally well-understood legal status, and would obviously apply to holding objects for other people for safekeeping. See *Bridge Tower Dental, P.A. v. Meridian Computer Center, Inc.*, 152 Idaho 569, 573 (2012).

In this particular case, the defendant stated that he had agreed to hold on to the medication for a friend while they played Frisbee golf. The oral agreement obviously did not intend for the defendant to do anything other than store the medication for his friend. The state is also concerned about the "usualness and lawfulness of [the defendant]'s .. practice" in holding objects for friends, but holding objects for others is a common enough practice for people in general that a further showing would be unnecessary. This Court should so hold.

DATED this 22 day of October, 2013.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Jay Logsdon
JAY LOGSDON, ISB 8759
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23 day of October, 2013, served a true and correct copy of the attached APPELLANT'S REPLY BRIEF via interoffice mail or as otherwise indicated upon the parties as follows:

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